APPEAL NO. 021719
FILED AUGUST 26, 2002

This appeal arises pursuant to the Texas Workers' Compensation Act, TEX. LAB. CODE ANN. § 401.001 *et seq.* (1989 Act). A contested case hearing (CCH) was held on May 20, 2002. The hearing officer determined that the respondent (claimant) was entitled to supplemental income benefits (SIBs) for his 11th quarter of eligibility because he was enrolled in, and satisfactorily participated in, a Texas Rehabilitation Commission (TRC)-sponsored vocational rehabilitation program, and that he had no ability to work. No findings and conclusions were made to the effect that the claimant's search for employment met the requirements of a good faith search.

The appellant (carrier) appeals all fact findings made by the hearing officer. The carrier argues that failure to attend the TRC-required coursework does not amount to "satisfactory participation" in a TRC-sponsored plan. The carrier argues that failing to file a complete Application for [SIBs] (TWCC-52) by the due date constitutes a failure to file at all. There is no response from the claimant.

DECISION

Reversed and remanded.

The claimant's position on the good faith job search requirement was that he searched for employment during every week of the qualifying period, and that he also was enrolled in a TRC-sponsored program. However, he agreed that he had not attended training school since October 2001 and would not be returning until June 2002. The qualifying period ran from November 18, 2001, and ended on February 16, 2002. The claimant agreed that he had supplemented his original TWCC-52 at the benefit review conference with additional job contacts. There was conflicting evidence as to whether he placed applications everywhere he said. The adjuster testified that she was surprised to get his TWCC-52 for that quarter with job contacts since all of their conversations about the "good faith" requirement involved whether the claimant was going to go back to school.

An injured worker must comply with the requirements of Tex. W.C. Comm'n, 28 TEX. ADMIN. CODE § 130.102(d) (Rule 130.102(d)) in seeking to meet one of the functional equivalents of a good faith search for employment. We cannot therefore endorse the hearing officer's statement that nonattendance in purchased classes for a TRC training program during a qualifying period "is not determinative" in deciding whether there has been satisfactory participation in a program. More than mere enrollment is clearly required by Rule 130.102(d)(2).

There was no TRC plan document in evidence that indicates what activities of the claimant other than training are to be undertaken for the qualifying period. The correspondence from the TRC, dated in March 29, 2002, after the qualifying period,

confirms that the claimant is a "client"; it notes only that the claimant is "co-operating" and that, although he has missed school, he is expected to start back in June 2002. The TRC case file notes in evidence indicate that for much of the qualifying period, the TRC tried to reach the claimant but could not. The claimant offered no testimony about any other responsibilities under his plan with TRC other than training. In this case, given that he had initially enrolled but dropped out of his classes before the qualifying period started, and had not resumed class as of the date of the CCH, his non-attendance does not qualify as "participation" in the TRC-sponsored program, let alone satisfactory participation, regardless of the reason for not attending class. The hearing officer's finding that the claimant was enrolled and satisfactorily participating in a full-time TRC-sponsored vocational rehabilitation program is against the great weight and preponderance of the evidence and is reversed.

Likewise, the finding that the claimant had "no ability" to work was a finding on a theory not urged and totally unsupported by the record, which contains no narratives or opinions from the treating doctor pertinent to the qualifying period that the claimant is unable to perform any type of work. That this could be an erroneous finding is underscored by the lack of comment in the discussion on the existence of the required narrative or whether other records show an ability to work.

By contrast, although the hearing officer discusses the claimant's job search, there are no findings of fact as to whether the hearing officer believed that this search constituted a good faith search under Rule 130.102(e). The hearing officer appears to have placed reliance in her discussion on the TRC program. Because the issues relating to the job search by the claimant have not been resolved, we remand for further consideration whether the claimant has met the requirement that he made a good faith search for employment commensurate with his ability to work.

With respect to the timely filing aspect of the appeal, we tend to agree that the completeness of a TWCC-52 goes to the weight it will be given, not to whether that form has been filed timely.

Pending resolution of the remand, a final decision has not been made in this case. However, since reversal and remand necessitate the issuance of a new decision and order by the hearing officer, a party who wishes to appeal from such new decision must file a request for review not later than 15 days after the date on which such new decision is received from the Texas Workers' Compensation Commission's Division of Hearings, pursuant to Section 410.202 which was amended June 17, 2001, to exclude Saturdays and Sundays, and holidays listed in Section 662.003 of the Texas Government Code in the computation of the 15-day appeal and response periods. *See* Texas Workers' Compensation Commission Appeal No. 92642, decided January 20, 1993.

The true corporate name of the insurance carrier is **ZURICH AMERICAN INSURANCE COMPANY** and the name and address of its registered agent for service of process is

GEORGE MICHAEL JONES
9330 LBJ FREEWAY, SUITE 1200
DALLAS, TEXAS 75243.

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Susan M. Kelley
Appeals Judge

CONCUR:

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Judy L. S. Barnes
Appeals Judge

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Elaine M. Chaney
Appeals Judge